D. Senhauser

IN THE CIRCUIT COURT OF BENTON COUNTY, MISSOURI

JAMES WEAVER,
JOHNNIE WEAVER,
LYLA MAE WEAVER,
JOE WEAVER,
MARY WEAVER and
LARRY WEAVER,
by next friend,

Plaintiffs,

vs. CASE NO. 456

AMERICAN TOBACCO COMPANY, INC.,

Defendant.

March 31, 1970
Warsaw, Missouri

VOLUME II

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DONALD A. SENHAUSER, M.D.,

being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARDY:

Q Will you state your name, please, sir?

A Donald A. Senhauser.

Q And where do you live, Dr. Senhauser?

A [DELETED]

Q And are you a medical doctor?

A Yes, sir.

Q And what is your present position?

A I am Professor of Pathology at the University of Missouri School of Medicine.

Q At Columbia?

A Yes, sir.

Q And how long have you been a Professor of Pathology at the University of Missouri?

A Since 1963.

Q Let's go back, where were you born?

A In Dover, Ohio.

Q Where did you get your medical education?

A At the College of Physicians and Surgeons, Columbia University, in New York.

Q In New York?

A Yes, sir.

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Q And when did you graduate from medical school at the College of Physicians and Surgeons, Columbia University?

A 1951.

Q And following your graduation in 1951, did you take any other postgraduate work?

A Yes, sir.

Q What was that?

A I completed five years of residency training, taking my boards in anatomic and clinical pathology.

Q Incidentally, Doctor, be sure you speak loudly enough that all these gentlemen back here can hear.

And where did you do that, did you say?

A I had one year of it at Columbia University, and then four years at the Cleveland Clinic Foundation, Cleveland, Ohio.

Q One year at Columbia University in New York?

A Yes.

Q Four years in the Cleveland Clinic in Cleveland, Ohio?

A Yes.

Q And what type of training was that?

A Residency in anatomic and clinical pathology.

Q And during the time of your graduation, during this additional training and since then, have you been active as a clinical pathologist?

A Yes, sir.

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Q And is a clinical pathologist the type of practice of pathology that has to do with taking of the tissue specimens and put them on the microscope, and telling the surgeon, or whoever it was that submitted the tissue, what it is?

A Yes.

Q And then you left the Cleveland Clinic about what year?

A 1963.

Q And that is when you came to [DELETED]

A Yes, sir.

Q Was that the start of 1963?

A July of 1963.

Q July of 1963, and did you come to [DELETED] as a full professor at that time?

A (The witness nodded.)

Q You have been a full professor as distinguished from an assistant or associate professor?

A I came as an associate professor and was promoted to full professor.

Q All right, sir, at the present time do you act as a clinical pathologist at the University of Missouri Medical Center?

A Yes, sir.

Q Do you also instruct medical students?

A Yes, sir.

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Q Was that true also in 1964?

A It was.

Q Doctor, have you done any writing in the general field of pathology, or in any particular area?

A Yes, sir.

Q Tell the jury about how many articles you have written in medical and scientific journals on your specialty?

A I have written eighteen articles in my research area, and also reports from my practice, and I have been the co-editor of three books on diseases of the thyroid.

Q And what medical or specialty associations are you a member of?

A I am a member of the American Society of Clinical Pathologists, American Society for Experimental Pathology, the College of American Pathologists, the International Academy of Pathologists.

Q Doctor, did you, at my request, review the medical records and the pathology slides that are over on that table in that blue box, and also look at the x rays of Oris Lyle Weaver, whose death is the subject matter of this lawsuit?

A I did.

Q And had you, back at the time of Mr. Lyle Weaver's treatment, had anything to do with the diagnosis of his cancer?

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A Yes, sir; I did.

Q All right, and would you explain to the jury what was your position at that time and just what it was you had to do with Mr. Weaver when he was in the hospital?

A My position at that time was head of the section of Anatomic Pathology, which meant that I was the one who made, was primarily responsible for the diagnoses made from the tissue submitted to our department from the various surgeons on the staff.

Q Whenever a surgeon, the surgeon submitted tissues to find out if there was cancer or something else?

A Yes, sir.

Q You were primarily in charge of those who were doing the examination?

A Yes.

Q And did you also look at the slides, the tissues, yourself, to confirm or to agree or disagree with those who were working under you?

A I did.

Q Did you have working under you residents?

A Yes, sir.

Q Residents, those are doctors that are still in training?

A That's correct.

Q But, actually, doctors?

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A That is correct.

Q Now, tell the jury as a part of the work and clinical pathology there at the University of Missouri, and as a part of the training also, what was your practice with regard to where residents would make a diagnosis, did you encourage them as a part of their training to go any further than that?

A Yes, sir; we do, did and do. Because we feel that when they are out in practice, it is going to be necessary for them to go further than just rendering an opinion, or rendering a diagnosis that they must be, act as a consultant and be able to suggest further tests to the practicing physicians and consider this part of their job as a pathologist.

Q And so when they would make a diagnosis of a piece of tissue, did you then encourage them to make recommendations to the surgeons?

A Yes, sir.

MR. GEORGE MILLER: All of this testimony by Mr. Hardy is actually his testimony. All this man is doing is saying yes or no, and I object to the whole thing as leading and suggestive, and the witness ought to testify.

MR. HARDY: I will rephrase my question.

THE COURT: All right, don't lead the witness.

Q (by Mr. Hardy) In addition to making the bare

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diagnosis, tell the jury what was your instructions and your practice with regard to the consultation area that you mentioned as a part of their education.

A The resident was encouraged to suggest further tests and also, if possible, further procedures that the clinician or surgeon might do to further establish a diagnosis in the case.

Q All right. I hand you the hospital record, on page 52, and we will state Mr. Miller had this page retyped because the Xeroxing was so poor, so that Dr. Toalson's signature was over here and your signature or initials were over there (indicating), and I will ask you if--subject to the fact it has been reproduced--if that is the report on the left scalene lymph node of Mr. Oris Lyle Weaver, and, here, I will show you another copy that has your initial on it and Dr. Toalson's signature.

A Yes. Yes, this is it.

Q All right now, did you make this diagnosis or did Dr. Toalson make it, or did you both make it?

A The way we do this is that after the tissue is processed and the slides are stained, the resident receives the slides and he then makes a judgment. Then, in every case and every slide is brought to the senior man, and it is my diagnosis. If I do not agree with the resident, I change the diagnosis to agree and try to explain to him

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and teach him why he might be wrong or right.

In this case, it was the diagnosis that Dr. Toalson rendered, and I agreed.

Q So you really both reached the same diagnosis?

A Yes.

Q What was the diagnosis?

A The diagnosis was malignant undifferentiated spindle cell neoplasm in the scalene lymph node.

Q Is that the extent of the diagnosis?

A That is the diagnosis.

Q All right. On that same page, it says, "Note," and then it says what?

A The cells are undifferentiated, the history of smoking and the left hilar lung mass, the most likely origin of these cells is a spindle cell carcinoma of the lung.

Q Whose note is that, yours?

A That is Dr. Toalson's.

Q Is that the sort of thing you encourage the residents to do?

A Yes.

Q All right now, what part of this entire thing here was the diagnosis which you say was both yours and his?

A The diagnosis was the tissue diagnosis, which is malignant undifferentiated spindle cell neoplasm in the scalene lymph node.

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Q At the time you and Dr. Toalson were making that diagnosis, what was the date of it?

A The date is 2-13-1964.

Q All right. Were you just looking at the tissue, or did you have the history and the x rays and everything else before you?

A We did not have the x rays. We had only the very short, brief history, the summary given at the top. That is all that is submitted to us.

Q So at the time, without a picture of the x ray, looking only at the tissue, you made that diagnosis?

A Yes, sir.

Q Now, I would like to ask you, you say malignant undifferentiated spindle cell neoplasm?

A Yes, sir.

Q Is that the description of any cancer of the lung or bronchogenic carcinoma?

A That is not. If I had known it was a carcinoma, I would have so stated.

Q All right. What does it mean when you say neoplasm?

A Neoplasm is merely a statement there is new growth, and this is the definition of it, a new growth.

Q When you say a malignant neoplasm, what does that mean?

A That means it has the characteristics, both histologically and aggressive, evidence of an aggressive behavior,

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such as a metastatic lesion which was in the lymph node, which then defines it as a malignant neoplasm.

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Q Now, in this case when you said neoplasm, did you -- strike that.

When you say undifferentiated, explain to the jury what that means.

A That means the cells are very primitive. Most of their energies go into division, cell division and growth. There is no differentiation to the point where one can tell that they might either be a carcinoma or even even what type of tissue it might have come from.

Q All right. Now, you say neoplasm, malignant neoplasm. Could you tell for sure, from looking at the tissue, what type of cancer this was, whether it was carcinoma or sarcoma or melanoma, or what?

A No, sir, if I'd have been able to do that it would have been in the diagnosis.

Q Tell the jury in all of your practice there at the University of Missouri in the Department of Pathology, if you look at tissue and you can tell it's carcinoma, do you say carcinoma or do you say neoplasm?

A We say carcinoma.

Q If you can look and be certain that it's a sarcoma, do you say sarcoma or do you say neoplasm?

A We say sarcoma.

Q And if you look and you can tell for sure it's a melanoma, do you say melanoma or neoplasm?

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A We say melanoma.

Q And if you say malignant neoplasm, does this mean that you don't know what it is?

A This means that we cannot tell for certain the origin of this tumor.

Q Now, in this particular case, although you couldn't tell the origin of the tumor, whether sarcoma, carcinoma or melanoma, or what, would it fall in one of those three categories generally?

A Yes.

Q All right. In your own diagnosis, if you did not have the word "neoplasm" and had been required to specify one of the three as being your belief, which would have been your number one selection of the three?

MR. GEORGE MILLER: If the Court please, I object to that question. The doctor has already answered it. He said he couldn't tell from these cells what it was. If he could have, he would have said what it was.

MR. HARDY: He couldn't tell for sure and I am now asking him what his opinion was at the time as to which was most likely of the three.

THE COURT: He asked him to speculate.

MR. HARDY: Strike out "speculate".

Q (By Mr. Hardy) If you were going to classify and you couldn't tell for sure, did you have a believe -- belief as

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to which was more likely from the slides --

MR. GEORGE MILLER: If the Court please, I object again. The attorney is constantly leading the witness. He is --

MR. HARDY: No, I am not leading at all.

MR. GEORGE MILLER: But he is not asking direct questions of this witness, and he knows it.

THE COURT: Overruled as to the last question.

Q (By Mr. Hardy) You may answer it.

A When he said it was a spindle cell neoplasm and I said that it was a spindle cell neoplasm in general, the tumors, the malignant tumors which commonly have spindle cells are sarcomas.

Q And --

A So that if you are asking me on purely a statistical basis would a spindle cell tumor statistically, this is more likely to be a sarcoma.

Q Which would be the next most likely of the three?

A Statistically again I would say it would be a melanoma.

Q And the least likely then?

A The least likely would be a carcinoma.

Q All right. Now, let me ask you if you were aware, from the records and otherwise, of the subsequent development of the tests that were run and you may keep the record there and make any references you want to to refresh your recollection, were you aware of the fact that from your study of the records

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that they had the x-rays on February 7th, that showed shadow in the lung?

A You mean at the time we rendered the diagnosis?

Q No, you weren't then, you said?

A No, I was not.

Q You didn't know that but after I asked you to review the records --

A Yes.

Q -- and come to testify?

A Yes.

Q And would you step down here.

A (Witness complies.)

Q Have you seen this?

A I have.

Q Now, do you purport to be an expert in x-ray?

A No, sir, I am not.

Q Are you able to -- have you looked at enough x-rays that you can tell what's normal and abnormal?

A Yes, sir, I have.

Q From that, from the x-ray would you indicate to the jury with the degree of whatever reputation you have, where you believe that this mass actually exists that is shown in Exhibit 36?

A The mass exists -- here on the left side of the chest. (Indicating) It is a very smooth, rounded, mass which appears

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to be near the hilum of the lung. I cannot, and again, not being an expert, I cannot tell whether it impinges on the lung or whether it's behind the lung or in the mediastinum. I also believe that I can see an extension of this mass or a second mass, which is difficult to tell, here on the right side. (Indicating)

Q So that the mass, the extension of the mass that you see on the right side approximately directly across on the left side?

A Right.

Q All right, you may resume the stand.

A (Witness resumes the witness stand.)

Q Now, did you then learn from hospital records that following the x-rays of February 7th, that pulmonary function tests were done on Mr. Weaver which were within normal limits?

A Yes.

Q And did you then find out that a bronchoscopy had been done, performed?

A Yes, sir.

Q To look down into the lung and see if there were any tumors visible in the bronchi?

A Yes, sir.

Q And did you learn from the records that those were negative?

A Yes, I did.

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Q And did you learn that also bronchial washings were taken at the time of the bronchoscopy?

A Yes, sir.

Q And were analyzed and in the pathology department and found to be negative?

A Yes, sir.

Q And then did you learn that the sputum cytology was done to determine if there were cancer cells in the lung?

A Yes, sir.

Q And were those negative?

A They were negative.

Q And then did you learn that fluoroscopy was done --

MR. GEORGE MILLER: Now, if the Court please --

Q (By Mr. Hardy) -- to the left lung?

MR. GEORGE MILLER: -- I object to the constant leading.

MR. HARDY: I can take more time.

MR. GEORGE MILLER: Take more time. You have been testifying for the last hour.

Q (By Mr. Hardy) Will you turn to pages 41 and 42?

MR. HARDY: I was just trying to save time, Your Honor.

MR. GEORGE MILLER: Well, take the witness stand, we'll let you save time.

MR. HARDY: You have been up there enough.

Q (By Mr. Hardy) Looking at 41 and 42 tell the jury what was done.

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A There was a fluoroscopy of the left diaphragm.
Q And what is the purpose of fluoroscopy?
A The purpose of fluoroscopy is to determine whether there are certain types of motion within the chest, whether a mass can be further localized to determine whether the diaphragms move equally and freely. It can be used to determine heart size. It can be used for many different things.
Q And was the fluoroscopy, is the -- does the fluoroscopy indicate anything wrong with the left lung?
A It says "the left diaphragm was noted to move well without evidence of paralysis."
Q Is that a normal --
A That is a normal fluoroscopy.
Q Now, if you will, turn to page 48. I ask you what that indicates was done.
A This was a bronchoscopy, and then they washed out the left bronchus, collected the washings in an effort to find -- get cells which are shed in the hopes that they could determine whether these are malignant cells or not.
Q What date was that, doctor?
A That was done on the 11th of February, 1964.
Q And would you read to the jury what the purpose of this particular biopsy at the carina and bronchoscopy was for, if you would, please?
A It's stated here that "A biopsy was taken of the carina

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in order to rule out any invasive diseases at this point."

Q And that particular place of ruling out invasive disease was inside the respiratory system?

A Right, that's correct.

Q Right where the bronchi --

A The main bronchi divide.

Q And was that negative?

A Yes.

Q All right. Now, with all of those tests and with the positive and with the x-ray which you saw, mass, and with the positive diagnosis that you made along with Dr. Toalson, of the left scalene lymph node, did they then recommend a course of radiation treatment?

A According to the record, they did.

Q And from the record do you note that after about 31 days of treatment, and 6,000 rads, that the treatment was concluded --

A Yes, sir.

Q -- is that right?

A Yes, sir.

Q And you have observed -- do you have in there the x-ray report and you have seen the x-ray, have you not?

A Yes, sir.

Q Of after the treatment?

A Yes, sir, I have.

Q And what happened with respect to the mass that was in

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the x-ray of February 7th, after this x-ray treatment?

A It very rapidly grew smaller and in fact, with not being an expert, again I can no longer locate it in the post-radiation films.

Q Did it appear to be gone to you or was it still there?

A It appeared to be gone.

Q All right. Now, that rapid elimination or the elimination in that period of time, did that do anything to help you determine what type of tumor this was in the first place, whether it was bronchogenic carcinoma or the sarcoma in the mediastinum?

A It does not change my tissue diagnosis. What it does is to me, statistically, it would be surprising to find a bronchogenic carcinoma responding that well to that amount of x radiation.

Q How about lymphosarcoma?

A Lymphosarcomas respond exceptionally well to radiation.

Q All right, and did the result that you observed there in the post-radiation x-ray film, that is, being gone, and the location of the mass that you pointed out here on the February 7th, x-ray, is that a location where a lymphosarcoma could be expected to be?

A It is one of the places where lymphosarcoma develops.

Q And with the tests that were all negative about the lung and with this result of the radiation and with the benefit of

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all of the medical records that you did not have and were not considering when you made the tissue examination, do you now have an opinion as to what type of cancer this was?

A With everything that I've seen since my original diagnosis I feel that statistically and -- that the possibilities are much more likely that this is a sarcoma of some kind rather than a carcinoma.

Q All right. Dr. Senhauser, insofar as your experience is concerned, do you -- have you been working in the area of pathology, have you kept generally informed on the various claims that are made with regard to cigarette smoking, lung cancer causation, and that sort of thing?

A Yes, sir, in a general way.

Q In a general way. Do you have an opinion as a pathologist concerned with disease as to whether or not it has been medically and scientifically proved that cigarette smoking causes lung cancer?

A My opinion is that at this point in time it has not been scientifically proved.

Q All right. You recognize -- you feel that cigarettes are legitimate suspect for investigation?

A Very definitely.

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Q Now, Doctor, have you seen lung cancers of all of the different histological types, occur both in smokers and non-smokers?

A Yes, there is altered frequency changes. But we have seen all in smokers and non-smokers.

Q The other question I wanted to ask you is, whether or not you have done any autopsies?

A Yes, sir, I have.

Q Would you tell the jury whether or not when you do an autopsy, that you can tell, either with the naked eye or microscopically, the lung of a smoker from the lung of a non-smoker?

A I cannot.

Q Dr. Senhauser, do you expect to send a statement for your time as an expert witness in this case to be compensated for your time and expenses?

A Yes, I do.

MR. HARDY: That is all.

CROSS EXAMINATION

BY MR. GEORGE MILLER:

Q Doctor, you say you do not believe it has been scientifically proved that lung cancer is caused by cigarette smoke: right?

A That is true.

Q What type of scientific proof would you think would be

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necessary to establish the cause and effect relationship between smoking cigarettes and lung cancer?

MR. HARDY: If the Court please, I object to that question for the reason that it calls for speculation and conjecture as to what would be proof to the scientific mind.

THE COURT: He asked him what it would take to satisfy him.

MR. HARDY: What would you have to see before you would be satisfied? I say it calls for speculation and conjecture, if he hasn't seen it.

THE COURT: Objection overruled.

Q (by Mr. George Miller) You may answer.

A Well, this is not my field of research. However, I would expect that there would have to be a very, very closely controlled study on a species of animal which is susceptible as a disease model. And that the animal would have to be subjected to very carefully controlled studies, and there would have to be the development not only of epithelial change in the bronchi, but also very definite of evidence of invasive diseases.

Q Do you know whether or not Dr. Ohrbach has done exactly that thing?

MR. HARDY: Just a moment. Just hold up.

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(Thereupon counsel approached the Bench and the proceedings were had and entered of record:)

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MR. HARDY: Your Honor has ruled about this unpublished study of Dr. Ohrbach's, that he has declined to reveal to independent scientists. It has been up now three times.

I can think of no reason Mr. Miller keeps asking questions on it, when you have ruled on it repeatedly, except in an effort to create prejudice in the jury. It is stepping clear over the bounds. Your Honor has ruled on it three times. Yet by every means at his hand, he tries to work back into this again.

What it amounts to is, we have made a long record of this before, is that there was some newspaper publicity about Dr. Ohrbach making certain claims.

I state categorically in the record, and I am prepared to prove, that Dr. Ohrbach has refused, and the American Cancer Society has refused, to expose his so-called valid work to the scrutiny of an independent scientist. I can prove that at any time it is called for.

Now, it has not been published in the literature. I suspected when he asked him to speculate on what might it take to satisfy him that he was trying for another shot at the same thing.

I would not only object to this as being highly prejudicial and improper, but I ask that the Court instruct Mr. Miller in this ruling to not raise the subject again because this is the most prejudicial thing--it appeared in the New York

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Times and Time Magazine, and then they won't let scientists look at it.

I say, to try to get the witness committed to something that noone can get at, is highly prejudicial and cripples the defense and could easily result in irreparable prejudice to the jury.

MR. JAMES: I ask the Court to instruct the jury to disregard the question, and to instruct Mr. Miller not to ask the question anymore about Dr. Ohrbach's dogs, until he is ready to show it was published.

MR. GEORGE MILLER: It was widely circulated in all of the newspapers, the results of Dr. Ohrbach's tests. There is no question about the circulation of the exact outcome of the tests. The newspaper stated, and I have copies of the newspaper report, the newspapers stated how many dogs Dr. Ohrbach used, how he conducted the experiments, the number of them that did actually develop carcinoma of the lung, and the number of them that developed emphysema, and the number of them that developed other diseases or conditions of the lung due to the inhalation of the cigarette smoke.

All of this has been widely circulated.

MR. HARDY: And this is all the more reason, Your Honor, that it is highly prejudicial for him to be able to keep asking questions about it when it has not been published in the scientific literature or has been concealed from the

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scientists, for some unknown reason.

Now what happened is this: in a very unscientific manner, for which he is up for criticism right now, he holds a press conference and announces the results of his dog study to the New York Times and the press all over the country, all of the newspapers. He gives out a few little pictures for bait and then specifically declines to let anybody look at his work.

He says he is going to publish it later.

Now, I can say to Your Honor, as I said before, immediately with this kind of claim, the Chairman of the Board of the Tobacco Institute wrote and asked for an appointment of an independent panel of qualified men to evaluate the work--and got a flat turndown. He wouldn't let them see it.

Now, if the witness is asked here to speculate on whether he would be satisfied with something that--because I truly believe, I will label it exaggerated and a phony study that I can't prove one way or the other because they won't let it out--that is certainly prejudicial as can be.

And I do want to say that we had this whole thing out the other day. Your Honor ruled on it and you sustained an objection and instructed the jury to disregard any talk about Ohrbach's Beagle dogs.

Mr. Miller knows that and yet he keeps on doing it, which I think, Mr. Miller, is reprehensible.

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THE COURT: I don't think exactly the same question came up before.

MR. HARDY: Almost identical.

THE COURT: The question this time was whether he was acquainted with the work of Dr. Ohrbach. Isn't that the question?

Apparently he will say no.

MR. GEORGE MILLER: If he says no, why, that is all I will ask him.

THE COURT; But even if he says yes, do you think the fact he was printed in the newspaper, he would have to know more than the newspaper accounts.

MR. GEORGE MILLER: I just want to know if he is acquainted with it.

I am also going to ask him, if Your Honor please, about whether or not he has studied an article reprinted from the Journal of the American Medical Association by Drs. E. E. Rockey, F. D. Speer, S. A. Thompson, K. J. Ahn and T. Hirose.

MR. HARDY: That is published. Nobody is objecting to it.

MR. GEORGE MILLER: Three different articles.

MR. HARDY: Nobody objects to that. It is this trying to throw the low blow that I think is reprehensible. The business of trying to get up some prejudicial matter and to ram it into the jury--when you have been told time and again

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not to, I think is unbecoming.

MR. GEORGE MILLER: Well, I think this doctor you and I both know that there was circulated both in the United States--

MR. HARDY: It was phony.

MR. GEORGE MILLER: I don't agree with you it is phony. Dr. Ohrbach is one of the finest, recognized specialists in the world in this field. I don't think there is anything phony about it.

I disagree with the attorney. I am sure if Dr. Ohrbach could come here he would certainly show and demonstrate there is nothing phony at all about it.

MR. JAMES: This is not a published work at all.

THE COURT: Well, does it have to be published if he is just going to ask him if he is familiar with the work, not the article?

MR. JAMES: The question was--I really don't think the question makes any difference--don't you know that Dr. Ohrbach did exactly that, or something to that effect.

THE COURT: All right. I think if you are going to ask him about the article, it would be improper. I think if you ask him if he is familiar with his work, that is another question.

MR. HARDY: But let me say this: he has already told you the work he is talking about.

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THE COURT: Well, I don't think he can go into that, particularly if he says--

MR. HARDY: He is telling you the work he is talking about. Dr. Ohrbach has done work back through the years in many respects, but the work he is talking about, which Mr. Miller has already admitted he can't be familiar with it for the reason nobody is because it has been kept from the public.

THE COURT: I think that is for the witness to answer, whether or not he is.

MR. HARDY: I can prove it has not been released.

THE COURT: But the question is, is he familiar with the work. If he says no--

MR. HARDY: So then he identifies the work, which we have had up before.

Mr. Miller says "You know the work where he produced his cancer with the Beagle dogs." Then the prejudice is done.

MR. GEORGE MILLER: I don't expect to ask that question.

THE COURT: I think in good faith--don't refer to it unless you in good faith think it is admissible.

MR. HARDY: I don't. I would like to go by that rule.

THE COURT: You can ask him this question, the one you asked him, are you familiar with the work, without making reference to the article. And I don't want you to refer to any results declared by the newspapers or in that article.

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This is his published work.

If he says, no, he is not familiar with it, well, that is the end of it, without leaving any inference that the work would prove otherwise.

MR. JAMES: If he says yes, doesn't he have to ask the Sixty-Four Dollar question: do you consider this authoritative work?

MR. GEORGE MILLER: If he would go into it, I would certainly do that.

THE COURT: Yes, he can do that.

(Thereupon the proceedings returned to open Court.)

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Q (by Mr. George Miller) My question is, very simply, whether or not you are acquainted with the work of Dr. Ohrbach?

A Yes, I am acquainted, I have read about it.

Q Are you acquainted with his recent work in that field that we have been talking about?

A I am not clear. Recent, within recent weeks?

Q Within recent months, is it.

A Concerning what?

Q Concerning scientific proof that you have mentioned.

A I have read only in the throwaway literature, which we call throwaway which comes from drug houses, and Medical World News, which is kind of a physician's equivalent of

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Time magazine, about this. But I have not seen this published in a refereed journal. And I cannot give any opinion about this.

Q All right. Do you consider the work that he has done in the past and that has been published in the journals and you say you have read as authoritative?

A He is one of the leading investigators in this field.

Q Will you consider him an authoritative experimenter, developer, or scientist in that field, Doctor?

A I think he is.

Q All right. Now, I will ask you if, in arriving at your opinions, you took into consideration an article reprinted in the American Medical Association, December 15, 1962, printed in the American Medical Association, an article, reporting studies by Drs. E. E. Rockey, M.D; F. D. Speer, M. D.; S. A. Thompson, M.D.; K. J. Ahn, M.D.; and T. Hirose, M. D. of New York City, entitled: "Experimental Study on Effect of Cigarette Smoke Condensate on Bronchial Mucosa"?

A I did not read that.

Q You did not take that into consideration in arriving at your opinion?

A My opinion of what, sir?

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Q. Do you tell me, Dr. Senhouser, that in your opinion that has not been medically or scientifically proved?

A. It is.

Q. You did not take this into consideration?

A. I did not.

Q. I will ask you if you took into consideration an article published in InternationalSurgery, Volume 46, November 1966 entitled "Evolution of Cigarette Smoking Techniques in Dogs" by E. E. Rocky of New York City?

A. No.

Q. Did you know that these articles existed anywhere?

MR. HARDY: I object to that question.

MR. GEORGE MILLER: I withdraw the question.

Q. I will ask you if you read and took into consideration an article published in International Surgery by E. E. Rocky and F. D. Spears entitled "Ill Effects of Cigarette Smoking in Dogs?"

A. No.

Q. Doctor, your answer was to Counsel for the American Tobacco Company that you didn't believe it had been scientifically proven that cigarettes can cause and do cause lung cancer, do you believe that it has been medically proven that it does and can cause lung cancer?

A. I do not.

Q. Doctor, do you believe that there is any connection

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whatever between cigarette smoking and any possible cause of lung cancer?

A. I think it's one of the factors that have to be investigated.

Q. You say that the notes appended on page 52 in the pathologist's report in Lyle Weaver's case were written by Dr. Toalson?

A. That is correct.

Q. Let me ask you this, the note comes before your signature, does it not?

A. It does.

Q. Was the note on there when you said Dr. Senhauser agrees?

A. Yes, it was.

Q. At that time you knew there was a left hilar mass in the lung, didn't you?

A. I knew what was written above, and that is all.

Q. Had you looked at the x-ray reports at all?

A. No, I had not.

Q. All right. Did you consider that you had a good x-ray technician over there or not?

A. Yes, I think we have a very competent radiology department.

Q. I will ask you to read the radiological report on page 40 and ask you if there is anything in this radiologist's report from the University of Missouri which mentioned any

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protrusion whatsoever of any mass into the right lung or into the right lymph node area?

A. Impression is left hilar mass.

Q. That's right. It says nothing about anything in the right lung, does it?

A. It does not.

Q. Did you know personally the man who signed that?

A. Did I know him?

Q. Yes.

A. Yes.

Q. Is he competent and a qualified technician in the field of x-ray?

A. He is a physician and he's a radiologist and not a technician.

Q. He's a radiologist?

A. Yes.

Q. That's his specialty, that's his field, isn't it?

A. Yes, sir.

Q. I believe you told us that wasn't your field at all?

A. No, sir.

Q. Since you have looked at the x-ray now and since the American Tobacco Company has contacted you, you no longer agree with that note, is that right?

A. Sir, I will explain to you again why we let our residents do this.

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Q. You did, too, didn't you, didn't you sign that?

A. I signed the report and that was for the diagnosis that was made on the tissue.

Q. That's right, and you expected that to go to Dr. Mackenzi or whoever it was who was the thoracic surgeon?

A. Yes.

Q. You wouldn't purposely mislead him, would you?

A. I did not, diagnosis is exactly what I stated.

Q. You and Dr. Toalson gave, were trying to give this surgeon the benefit of your best honest judgment at that time, weren't you?

A. Yes.

MR. GEORGE MILLER: That's all.

MR. HARDY: That's all.

(Witness excused.)

THE COURT: We'll take about a ten minute recess.

(Jury admonished.)

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